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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JOSHUA A. DIEMERT, an individual,

10 Plaintiff,

11 v.

12 THE CITY OF SEATTLE, a municipal
corporation,

13 Defendant.

14 No. 2:22-CV-01640-JNW

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

NOTING DATE: September 13, 2024

Oral Argument Requested

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I. INTRODUCTION

2 The City of Seattle's Race and Social Justice Initiative ("RSJI") is intended to eliminate
3 systemic barriers to equal opportunity, in order to create equitable outcomes for all. The RJSI
4 has at times required trainings, which educate employees on institutional racism utilizing
5 mainstream pedagogy supported by social science and history. Beyond those trainings, the City
6 also required employees to participate in two RSJI activities of their choosing per year. Plaintiff
7 Joshua Diemert attended the required trainings and disagreed with them. He then refused to take
8 part in additional RSJI activities. The City never required Plaintiff to attend any specific
9 trainings after he complained, and when he failed to meet the minimum RSJI commitment, it did
10 not penalize him.

11 In fact, the City never penalized Plaintiff at all, either for his objections to RSJI, or for his
12 increasingly aggressive and inappropriate attacks on coworkers. Nor did it turn a blind eye to
13 any alleged harassment or mistreatment of Plaintiff based on his race. On the contrary, the City
14 made allowances for, responded to, investigated the concerns of, and generally supported and
15 even protected Plaintiff. When Plaintiff nevertheless chose to resign (more than two years after
16 his last required RSJI training), he did so voluntarily, and not because of any mistreatment by the
17 City.

18 The City's RSJI work is important. Equally important is the City's commitment to
19 prohibiting workplace discrimination of all kinds, including against white employees. The
20 undisputed facts show the City adhered to both principles here. Plaintiff may not have agreed
21 with the teachings of the RSJI, and he is entitled to his opinions. The City did not, however, in
22 any way mistreat him, and it should not be required to spend additional taxpayer money to
23 defend against his baseless claims. Because Plaintiff's causes of action are factually and legally
24 deficient, the City respectfully requests that the Court dismiss all of his claims with prejudice.

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II. FACTS

A. Plaintiff's tenure with the City was devoid of any negative personnel actions and ended with his voluntary resignation.

4 Plaintiff began working at the City in January 2013 as a Program Intake Representative in
5 the Utility Discount Program in the Human Services Department (“HSD”). Declaration of Ryan
6 Groce (“Groce Decl.”), ¶3. He remained primarily in this role throughout his employment. *Id.*¹
7 He applied for another position once, in 2017, for a role in the Human Resources Department,
8 and he was not selected because he was not qualified. *Id.*, ¶4. Plaintiff received satisfactory
9 performance evaluations every year of his employment. *Id.*, ¶5. The City never disciplined him
10 or placed him on a performance improvement plan. *Id.*; Declaration of Victoria Slade (“Slade
11 Decl.”), ¶2, Ex. A (“Plaintiff Dep.”) at 89:7-25. The City also never transferred him, reduced his
12 pay, or materially altered his duties. Groce Decl., ¶5. His employment ended solely because he
13 voluntary resigned on September 7, 2021. *Id.*

B. RSJI is intended to advance equity, and it does not contradict City policy prohibiting discrimination based on race.

16 RSJI is a citywide effort to “end institutionalized racism and race-based disparities in
17 City government.” Dkt. 11-9 at 3. While RSJI is externally focused on advancing equity in City
18 programs, services, and policies, the internal components of RSJI are intended to teach
19 employees to identify and interrupt bias within existing structures so as create an environment
20 that is fair and inclusive for all employees. Dkt. 11-7; Dkt. 11-12 at 34 (“Racial equity is not just
21 about better outcomes for people of color. It’s about a world in which ***we all get to be whole and***
22 ***valued . . .***”) (emphasis added). The goal of RSJI is to “to create a level playing field for all.”
23 Slade Decl., ¶4, Ex C (“Sharkey Dep.”) at 20:3-20.

24 While race is a focal point, the RSJI looks across all identities, not just race, and it works
25 to eliminate disparities based upon ability, status, gender, and other characteristics. Sharkey

¹ Diemert briefly held a lead position in 2016 and performed out of class work for a period in 2017. Groce Decl., ¶1. Any allegations related to either role are barred by the statute of limitations. Dkt. 28.

1 Dep. at 21:22-22:1, 68:22-69:1. RSJI does not involve quotas, or setting demographic goals for
 2 employees. *Id.* at 61:9-13. Nor does RSJI single out white employees for special required
 3 training or activities. Plaintiff Dep. Vol 1 at 228:23-229:12. Although the City has had offerings
 4 that were intended for white people, such as affinity groups or certain trainings, none have been
 5 mandatory. Sharkey Dep. at 72:6-17, 106:16-107:3.² And affinity groups (voluntary racially
 6 aligned interest groups, also known as caucuses) were open to all and all worked with the same
 7 goal of eliminating institutional racism. Sharkey Dep. at 70:10-72:5. During his employment,
 8 Plaintiff was invited to attend white caucus events, but he was never required to do so. Plaintiff
 9 Dep. Vol 1 at 107:22-108:1. He also does not allege that the City ever prevented him from
 10 attending a training or event that was focused on employees of color.

11 RSJI does not in any way promote or condone discrimination against white people.
 12 Sharkey Dep. at 135:19-136:11. On the contrary, the City's policies prohibit race discrimination,
 13 including discrimination against white employees. Slade Decl., ¶5, Ex D . The City takes
 14 complaints of discrimination against white employees seriously, to ensure no employee is
 15 mistreated based upon a protected class. Slade Decl., ¶6, Ex. E ("McLellan Individual Dep.") at
 16 35:9-17 (leading with race means ensuring people have equal access to HR services). To
 17 reinforce its prohibition against discrimination, the City requires employees to take regular
 18 trainings on anti-discrimination and anti-harassment. Groce Decl., ¶6; Ex. A (Plaintiff's training
 19 history, reflecting his attendance at these classes in 2016 and 2018).

20 **C. Plaintiff was required to attend three specific RSJI classes, which are not
 21 derogatory towards white people and are based in social science and history.**

22 The City's offerings for employee RSJI trainings have changed over time as the program
 23 has evolved. Sharkey Dep. at 173:3-25; Slade Decl., ¶7, Ex. F ("McLellan 30(b)(6) Dep.") at
 24 71:9-72:15. Diemert's training records reflect that he attended three required RSJI classes: Race,
 25 The Power of an Illusion ("RPOI"), on 3/20/15; Equity Lens: Why We Lead With Race, on

26 _____
 27 ² Plaintiff admits that he did not attempt to attend either race-separated training, although he told his union
 representative he wanted to attend the training for people of color as a form of protest, not because he was interested
 in the material. Slade Decl., ¶3, Ex. B ("Plaintiff Dep. Vol 2") at 408:8-410:9.

1 4/26/17; and Undoing Institutionalized Racism, presented by the People's Institute for Survival
 2 and Beyond, on 11/19/19. Groce Decl., Ex. A.

3 These RSJI trainings are not derogatory towards white people. RPOI is a documentary
 4 series created by California Newsreel and the University of California, with accompanying
 5 facilitation. *See* <https://www.racepowerofanillusion.org/>. RPOI is “one of the most widely used
 6 documentaries ever in formal and non-formal education in the US,” and has been used by
 7 “millions of people” as a means of furthering racial understanding. *Id.* RPOI explains the origin
 8 of the modern concept of race, including how ideas of race have evolved over the history and
 9 development of the United States. Groce Decl., ¶8, Ex. B. One of the primary messages of
 10 RPOI is that race is not a biological fact, but instead a social construct that nevertheless has a
 11 continuing impact through institutions and systems in the United States. *Id.* RPOI repeatedly
 12 conveys the message that the concepts it teaches, including white privilege and white supremacy
 13 culture, are inherent in structures and not the result of modern individual actors. *Id.*, ¶9, Ex. C at
 14 12 (“***None of us are responsible for the past***; but all of us are
 15 responsible for the present and to some extent, the future.”) (emphasis added). RPOI also
 16 reflects on how numerous identities—not just whiteness—can confer unearned privilege. *Id.*,
 17 Ex. B at 26.

18 Racial Equity Lens: Why We Lead with Race teaches that the goal of RSJI is to eliminate
 19 racial disparities and achieve racial equity. *Id.*, Ex D. This includes a discussion about “how
 20 white supremacy culture affects us all,” and why “leading with a racial equity lens is the strategy
 21 to create equity for all.” *Id.* at 2, 4 (emphasis in original). This training also explains various
 22 forms of oppression and privilege, emphasizing that there are numerous power systems in our
 23 society, of which race is one. *Id.* at 8-9. This training focuses on educating attendees about
 24 systemic inequities and how they impact outcomes. *See id.* at 11-13 (discussing data around
 25 disparities in educational attainment and social mobility by race), 14 (discussing racial wealth
 26 gap). Throughout the training, the messaging is clear that the end goal is to eliminate disparities
 27 and create equity, not to subjugate white people. *See id.* at 15 (“Racial equity is not just about

1 better outcomes for people of color. ***It's about a world in which we all get to be whole and***
 2 ***valued . . .***” (emphasis added).³

3 The third official RSJI training that Plaintiff attended was conducted by a third party, the
 4 People’s Institute of Survival and Beyond (“PISAB”). PISAB has presented this training for 40
 5 years, in dozens of states, and with hundreds of public and private sector institutions. Slade
 6 Decl., ¶8, Ex. G (“Wise Report”) at 11. PISAB is among the more respected and commonly
 7 employed training organizations in the United States. *Id.* The PISAB trainings provide similar
 8 content, including emphasizing that systems and structures that developed over the history of the
 9 United States have created disparate outcomes based on race. Groce Decl., Ex. E (“Racism has
 10 distorted, suppressed and denied the histories of people of color ***and white people as well.***”)
 11 (emphasis added).

12 The materials the City used in these trainings and across the RSJI are based on well-
 13 established analytical frameworks and social science literature, and mainstream anti-bias training
 14 practices. As nationally recognized anti-racism trainer and expert Tim Wise observed, “[RSJI
 15 materials] are well within the respected, and scholarly frameworks established by those who
 16 study racial inequality, and they are supported by the relevant social science literature on
 17 methods for effectively promoting greater diversity, equity, and inclusion in institutional spaces.”
 18 Wise Report at 26. *See also id.* at 31 (“[T]he methodologies and materials used by the RSJI are
 19 in keeping with some of the most commonly deployed approaches to this work, nationwide, for
 20 several decades, including discussions of white privilege, internalized superiority/inferiority,
 21 implicit bias, and white supremacy culture.”).

22 **D. HSD required employees to complete two RSJI activities per year, although
 23 it did not penalize employees who did not fulfil the requirement.**

24 Outside of the three required trainings referenced above, employees in HSD were
 25 required to complete two RSJI activities per year. Groce Decl., ¶7. To do so, employees could
 26

27 ³ See also Dkt. 11-7 (the goal of RSJI is to “create a relational culture that is fertile soil for our collective care,
 health, wellbeing, creativity, power, and collaboration.”).

1 take trainings or attend events pertaining to race or social justice. *Id.* These did not need to
 2 address race and instead could relate to gender, poverty, Indian affairs, LGBTQ issues, or other
 3 social justice subjects. *Id.* If an employee was not interested in the trainings the City offered, he
 4 could identify outside trainings or activities and submit them for approval. *Id.*; *see also* Sharkey
 5 Dep. at 24:14-25:22; McLellan 30(b)(6) Dep. at 79:19-81:3.

6 The RSJI requirement is aspirational, not punitive: as the HR Director for HSD testified,
 7 “If an employee does not attend the two required trainings, or events, or isn’t working on a work
 8 group to advance racial equity, or does no learning about racial equity within that year, *they’re*
 9 *still able to get a meets expectations or fully performing rating. So there isn’t any adverse or*
 10 *negative impact to the employee for [not taking] . . . the two required or [attending] two events*
 11 *to advance your learning in the year.*” McLellan 30(b)(6) Dep. at 97:19-98:3 (emphasis added).
 12 This proved true for Diemert. Despite not meeting the RSJI requirement in 2019, he received a
 13 fully performing rating on his review. Groce Decl., ¶12, Ex. F; Plaintiff Dep. Vol 1 at 272:12-
 14 273:5.

15 **E. Plaintiff asserted his opposition to RSJI in antagonistic communications with**
 16 **HR and other City employees; HR tried to address his concerns, but Plaintiff**
was not satisfied.

17 Plaintiff is opposed to critical race theory (“CRT”) and embraces a “color-blind”
 18 philosophy. Plaintiff Dep. Vol 2 at 356:14-18; Plaintiff Dep. Vol 1 at 199:21-200:12. He
 19 objected that RSJI’s recognition of race was discriminatory and refused to participate in RSJI.
 20 The City attempted to but could not resolve his concerns.

21 **1. The City told Plaintiff he was not required to take any specific RSJI**
classes and would not be penalized for his failure to meet RSJI goals.

23 On November 14, 2018, Plaintiff reached out HSD HR to ask about available RSJI
 24 classes. Groce Decl., ¶13, Ex. G. He wrote, “there are not a lot of classes offered, some
 25 discriminate based on your cultural background and the ones offered I have already taken.” *Id.*
 26 He was referred to another HR representative, who attempted to assist him in identifying training
 27 classes. *Id.* Plaintiff appeared to drop the issue at that time. *Id.* (noting that Plaintiff did not

1 meet the requirement in 2019, and the City waived the requirement in 2020 due to COVID).

2 On January 15, 2021, Diemert again reached out to HSD HR to ask about required RSJI
 3 trainings. *Id.*, ¶14, Ex H. The City responded, “While HSD does not require any specific
 4 trainings each year for staff in the area of RSJI, we do require that staff participate in at least 2
 5 events each year that fall into the area of RSJI to facilitate growth as an organization in this
 6 area.” *Id.* Plaintiff reiterated the same question to a different HSD HR employee, Ryan Groce,
 7 on May 18, 2021, and he requested to remove the RSJI component from his evaluation. *Id.*, Ex.
 8 I. Groce responded, “we have not recently had any specific mandatory trainings. Only a
 9 requirement that staff identify areas within RSJI they want to explore and participate in those
 10 trainings.” *Id.* Groce advised Plaintiff that failure to address RSJI trainings in his mid-year
 11 review would not be considered in the review process. *Id.*

12 Plaintiff persisted, stating he wanted any reference to RSJI removed from his review and
 13 also arguing that City meetings and other gatherings had RSJI embedded in them. *Id.* Groce
 14 responded that leadership was looking into revising RSJI requirements but that in the meantime,
 15 Groce would document for Plaintiff that he was excused from the requirement. *Id.* Regarding
 16 the meetings with RSJI content embedded, Groce indicated Plaintiff may be required to attend
 17 meetings with RSJI components if appropriate for his role, but “[w]hether or not you participate
 18 in discussions during these sessions, or apply what is taught, would be based on your ability or
 19 comfort level.” *Id.*

20 Despite this reassurance, Plaintiff continued to challenge the City. He asserted his belief
 21 that all RSJI classes are inherently racist, and he flatly refused to take any more classes. *Id.* (“I
 22 will not take any RSJ trainings or take part in any activity relating to the ideology that RSJ is
 23 founded on.”) The City took no action against Plaintiff in response to his decision to forego
 24 future RSJI involvement. *Id.*; Plaintiff Dep. Vol 1 at 265:5-267:21.

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1 **2. Plaintiff advocated to start his own affinity group that was contrary to**
RSJI values but then abandoned his request.

2 Around the same time that he was arguing that all of RSJI was racist and asserting that he
3 would refuse to participate in it, Plaintiff also requested to start his own affinity group, which he
4 stated would be in favor of colorblind values. Plaintiff Dep. Vol 1 at 275:2-276:1. Previously,
5 he had declined to participate in the white caucus, based on his belief that the contents would be
6 offensive. Plaintiff Dep. Vol 1 at 108:19-24; 129:20-24. Indeed, when a white coworker invited
7 him to a caucus event, Plaintiff threatened to report her to the EEOC for discrimination. Slade
8 Decl., ¶9, Ex. H. Groce received Plaintiff's request and researched the procedure for starting an
9 affinity group. Groce Decl., ¶15, Ex. J. Groce learned that the groups were subject to approval
10 by the Change Team, a group of RSJI leaders within each department. *Id.* He advised Plaintiff
11 of the process, and Plaintiff did not follow up, instead objecting to the Change Team as having
12 "an anti-Capitalist, anti-Christian and anti-western liberal values ideology[.]" *Id.*; *see also*
13 Plaintiff Dep. Vol 1 at 276:10-277:18.

14 **3. Plaintiff engaged in an online dispute with his coworker and sent the**
coworker an offensive email, but faced no discipline.

16 Plaintiff also aggressively attacked his coworkers. On June 23, 2021, an employee in the
17 IT Department, Ed Odom, posted an article about the Tulsa Race Massacre and efforts to ban
18 CRT on a City SharePoint site. Slade Decl., ¶10, Ex. I. Plaintiff responded to the post, claiming
19 it was racist, and stating "[The] Republican party was created to free the slaves from the
20 Democrats." *Id.* When a coworker replied that Plaintiff's comment was ignorant, Plaintiff
21 called her a bigot and said, "I am sorry if my rejection of racial stereotypes upsets you. I am
22 against people attempting to racially scapegoat others because of their skin color which is why I
23 stand against CRT." *Id.* Odom attempted to engage Plaintiff in a dialogue via email. *Id.*, ¶11,
24 Ex. J. He wrote, "I chose to respond by email because I wouldn't want this content to be
25 misconstrued and seen as demeaning. I appreciate and invite tough conversations and value the
26 opinion of others. . . . ***I get it-it can seem as if it was a personal attack directed against all white***
27 ***people, but it is not.*** It is about accurately telling the stories that have been buried for years." *Id.*

1 Plaintiff responded to Odom with a hateful diatribe, asking him if he is “a psychic,”
 2 accusing him of spreading “political disinformation” and “public support of racism,” and
 3 comparing discussing CRT to teaching Mein Kampf in the workplace. *Id.* Plaintiff has testified
 4 that it was offensive to him to teach that white people had been responsible for Tulsa massacre,
 5 because doing so stereotypes white people based upon their race. Plaintiff Dep. Vol 2 at 398:16-
 6 399:21.

7 Following this exchange, Odom forwarded the message to HSD HR Director McLellan
 8 and also complained that he felt “personally attacked” by Plaintiff’s response. Slade Decl., Ex.
 9 J; McLellan Individual Dep. at 31:6-21. McLellan, mindful of Plaintiff’s polarizing views, took
 10 no action against Plaintiff. *Id.* at 46:10-49:17. She also protected him when other employees
 11 raised concerns that Plaintiff was posting City RSJI materials on his social media account. *Id.* at
 12 45:20-49:17 (“I wanted to do everything in my power to ensure that this did not go out and hurt
 13 Josh’s reputation in any way, shape, or form. . . . I wanted to ensure that there was no negative
 14 impact on Josh for simply posting on his personal social media account.”).

15 **F. After Diemert filed an EEOC charge in late 2020, the City investigated, but it
 16 was unable to substantiate Diemert’s allegations of discrimination.**

17 On December 23, 2020, Plaintiff filed a Charge of Discrimination with the EEOC. Groce
 18 Decl., ¶16. In response to the Charge, the City’s Human Resources Investigation Unit (“HRIU”)
 19 commenced an investigation. *Id.* Brandon Kuykendall, a licensed attorney working as an
 20 investigator with HRIU, was assigned the investigation. Slade Decl., ¶12, Ex. K (“Kukyendall
 21 Dep.”) at 14:4-12. After Plaintiff complained that Kuykendall was biased, the City designated a
 22 different investigator, Christy Kuna, to handle the allegations related to RSJI trainings.
 23 Kuykendall Dep. at 14:4-12, 25:8-23.

24 Plaintiff did not cooperate with the investigation. Kuykendall tried multiple times to get
 25 more information from him about his allegations, but Plaintiff said Kuykendall’s involvement
 26 and communications were “triggering” for him. *Id.* at 53:16-54:2, 59:3-12 (noting he wrote
 27 “reporter not cooperating” in the file), 62:1-8 (Kuykendall tried to communicate with Plaintiff on

1 multiple occasions, including assuring him that he would conduct an unbiased investigation; but
 2 was not able to get additional information). Plaintiff admitted he intentionally blocked the
 3 investigation: in a March 2021 private message to conservative politician and activist Chris Rufo
 4 (with whom Plaintiff had collaborated regarding his prospective claims against the City since
 5 2020 and to whom he had provided copies of RSJI materials during his employment), Plaintiff
 6 wrote, “*I purposely did not give the City much in their internal investigation[.]*” Slade Decl.,
 7 ¶13, Ex. L at 8; Plaintiff Dep. Vol 2 at 507:15-513:14.

8 What Plaintiff did communicate to the City was that his primary concern was the RSJI
 9 trainings, not the conduct of individuals he had alleged made racial comments to him.
 10 Kuykendall Dep. at 73:10-74:12. Kuykendall nevertheless investigated the comments Diemert
 11 cited, and he could not determine that any constituted racial harassment. Groce Decl., ¶17, Ex. K
 12 (Kuykendall Report). For example, regarding Plaintiff’s claim that Javier Pulido asked Plaintiff
 13 what he believed he could offer the department “as a straight white man,” Kuykendall
 14 determined this was a “one-time utterance by a manager that happened two years ago, that the
 15 issue was resolved when the manager apologized to [Diemert’s] satisfaction after, and that the
 16 two were now on good terms.” *Id.* at 4; Plaintiff Dep. Vol 1 at 166:20-167:21 (Pulido never
 17 made another offensive comment). Regarding the allegation that another employee denied a
 18 Utility Discount Program applicant based on race, Kuykendall found Plaintiff “reported the
 19 matter to management, and the customer’s benefit was ultimately approved.” Kuykendall Report
 20 at 4. *See also* Plaintiff Dep. Vol 1 at 169:24-170:20, 172:4-20 (admitting this only happened
 21 once, and the issue was corrected). Kuykendall also noted that this, and the alleged comment by
 22 Plaintiff’s manager that it was “impossible to discriminate against a white person” would have
 23 been sometime before 2017. *Id.*

24 Regarding the allegations that RSJI trainings were discriminatory, Kuna’s report reflects
 25 that she reviewed numerous training materials, including from sessions Plaintiff had not
 26 personally attended, and she interviewed trainers. Groce Decl., ¶17, Ex. L (Kuna report). She
 27 could not substantiate the allegations that trainers had made the statements Plaintiff attributed to

1 them, including the alleged statement that white people should give up opportunities or
 2 resources, or that they should give up friendship, safety, or security. *Id.* The trainers also
 3 confirmed that there had never been a focus on who was allowed to talk based on skin color. *Id.*
 4 (also regarding allegation that white people were required to be uncomfortable, noting that the
 5 White Supremacist Culture Training handout explained that “everyone is encouraged to welcome
 6 discomfort” and that it “did not target white people”).

7 Kuykendall advised Plaintiff on August 27, 2021, that HRIU had not substantiated his
 8 claims of discrimination, and he provided Plaintiff copies of both investigative reports. Slade
 9 Decl., ¶22, Ex. U. He wrote, “If you would like to speak further about our report or any other
 10 questions or concerns you may have, please let me know. . . .” *Id.* Plaintiff resigned less than
 11 two weeks later.

12 **G. Plaintiff resigned for personal reasons and not because of any mistreatment
 13 by the City.**

14 After Plaintiff submitted his EEOC charge in late 2020, the City took no action against
 15 him. As discussed above, the City investigated his complaints, did not require him to attend any
 16 additional RSJI trainings, and did not discipline him despite coworker complaints. Plaintiff has
 17 nevertheless concocted an array of allegations to support an alleged retaliation claim. None have
 18 merit.

19 Plaintiff claims he had technical issues that prevented him from working and that the City
 20 failed to assist him in retaliation for his complaint. In reality, Plaintiff’s supervisor and manager
 21 both assisted him, in addition to providing other options so he could work while having technical
 22 issues. Slade Decl., ¶14, Ex. M at 2-4; Plaintiff Dep. Vol 1 at 323:24-324:24. Plaintiff contends
 23 his supervisor Chaney Kilpatrick Goodwill cancelled one-on-one meetings with him; however,
 24 Goodwill denies that she cancelled more meetings with Plaintiff than with any other employee.
 25 Slade Decl., ¶15, Ex. N (“Goodwill Dep.”) at 21:14-22:21. And Plaintiff admits he has no
 26 knowledge of whether she cancelled meetings with others. Plaintiff Dep. Vol 1 at 315:17-23.
 27 Plaintiff claims Goodwill singled him out by asking another employee how many applications

1 Plaintiff had in his office drawer. This is false—Plaintiff had raised concerns about delays in
 2 processing applications, and Goodwill was attempting to help him. Slade Decl., ¶16-17, Ex. O
 3 and P; Plaintiff Dep. Vol 1 at 317:6-322:21. *See also* Goodwill Dep. at 40:11-42:23, 47:10-48:5.
 4 Meanwhile, Plaintiff admits he has no personal knowledge of whether Goodwill reviewed other
 5 employee's applications. Plaintiff Dep. Vol 1 at 322:8-21.

6 Plaintiff alleges his coworker Shamsu Said discriminated against him. Plaintiff made a
 7 complaint in late 2019 that Said had improperly approved a family member for the Utility
 8 Discount Program. Groce Decl. at ¶18. He claims Said thereafter confronted him in February
 9 2020 and accused him of having white privilege and being racist. Slade Decl., ¶18, Ex. Q.
 10 Plaintiff complained, and the City immediately separated him from Said. McLellan Individual
 11 Dep. at 66:20-67:12; *Id.* at 82:9-83:4 (Plaintiff's desk was mistakenly moved first instead of
 12 Said's, but this was corrected before Plaintiff reported to work). The City also submitted the
 13 complaint to the Ethics and Elections Committee for investigation. *Id.* at 69:6-10. Plaintiff
 14 cannot recall any negative or race-based interactions with Said after this interaction. Plaintiff
 15 Dep. Vol 1 at 300:14-301:18.⁴

16 Plaintiff also claims the City violated his FMLA rights. While there was a paperwork
 17 error that resulted in his partial leave being briefly mischaracterized, this technical violation did
 18 not cause Plaintiff to lose any FMLA benefits or pay. Groce Decl., ¶19; *see also* Plaintiff Dep.
 19 Vol 1 at 325:4-326:20. Moreover, when the error was uncovered, the City retroactively
 20 approved and reclassified the leave. Groce Decl., ¶19, Ex. M. In short, Plaintiff was not
 21 harmed. Plaintiff Dep. Vol. 1 at 325:4-326:20. Nor does he have evidence that the individual
 22 who processed his application harbored retaliatory animus against him or even that she was
 23 aware of his complaint. *Id.* at 326:21-327:17.

24

25

⁴ Nevertheless, on August 31, 2021, Plaintiff sent an eleven-page screed to his HSD workgroup, reiterating and expanding upon the concerns he had previously reported regarding Said. Groce Decl., ¶20, Ex. N. The email revealed Plaintiff had conducted a vigilante investigation into Said, searching property and business records, Employment Security Department data, and PPP loan information, and even posing as a customer of Said's family member's business. *Id.* Although this was not an appropriate manner of raising ethics concerns, HR shared the message with the Ethics and Elections Commission for further investigation. *Id.*

1 Finally, Plaintiff contends the City maintained a confidential folder on him. But this was
 2 simply an investigation file, maintained confidentially when an employee has made a complaint,
 3 as Plaintiff had. McLellan Individual Dep. at 51:19-52:12.

4 **H. Plaintiff resigned voluntarily because he had already moved to Texas and did
 5 not wish to return to in-person work.**

6 Plaintiff resigned on September 7, 2021. Groce Decl., ¶22. Plaintiff had at that time been
 7 working remotely due to the COVID-19 pandemic, but he was on the verge of being required to
 8 return to work in person unless he had an approved alternative work arrangement or disability
 9 accommodation. *Id.* Plaintiff had an accommodation request pending, meaning he had not been
 10 denied the ability to telework, although he had been informed that his position was not one that
 11 could be performed 100% remotely on a permanent basis. *Id.*; Slade Decl., ¶19, Ex. R.; Plaintiff
 12 Dep. Vol 1 at 327:18-25.

13 Plaintiff did not wish to return to work in-person because he was not living in Seattle or
 14 even Washington State. Over five months earlier, Plaintiff had sold his house in the Seattle area
 15 and moved with his wife to Texas. Although Plaintiff claims he was traveling back and forth to
 16 Seattle, he admits he resided “a majority of the time” in Texas. Plaintiff Dep. Vol 1 at 68:17-
 17 70:17. Plaintiff has also made numerous statements that conflict with the notion that he still
 18 lived in Seattle. For example, on July 8, 2021, Plaintiff responded to a tweet that was critical of
 19 schools teaching CRT stating, “My children had the same ideology pushed on them in the public
 20 schools [in Seattle]. **We moved to get away from it.**” Slade Decl., ¶20, Ex. S. *See also* Slade
 21 Decl., ¶21, Ex. T at 2 (telling Rufo in July 2020 that he was planning to sell his house in August
 22 or September of that year and would only continue working for the City if he could continue to
 23 telecommute); *see also* Plaintiff Dep. Vol 2 at 490:2- 491:4 (confirming he searched for
 24 materials regarding “whiteness” on Seattle systems in 2020 to share with Rufo, based on his
 25 expectation of leaving his position that August). The City was not aware that Plaintiff was living
 26 in Texas and would not have permitted him to work remotely from another state. Groce Decl.,
 27 ¶23.

1 In his resignation email, Plaintiff made additional discrimination allegations. *Id.*, ¶21,
2 Ex. O. Consistent with its practice, the City notified Plaintiff it had forwarded the concern to
3 HRIU for investigation. *Id.* Plaintiff responded that he did not wish to proceed with another
4 investigation. *Id.*

III. ARGUMENT

6 FRCP 56(a) entitles a party to summary judgment when “there is no genuine dispute as to
7 any material fact and the movant is entitled to judgment as a matter of law.” A factual dispute is
8 genuine “only if there is sufficient evidence for a reasonable fact finder to find for the non-
9 moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001). In this case,
10 there is no genuine dispute as to any material fact. The City is entitled to summary judgment on
11 all of Plaintiff’s claims.

A. Plaintiff's Equal Protection claim fails because he cannot offer evidence sufficient to support a finding of intentional discrimination.

14 Section 1983 authorizes civil actions for the “deprivation of any rights ... secured by the
15 Constitution and laws” against a party acting under color of state law. 42 U.S.C. § 1983. In
16 order to prove discrimination in violation of § 1983, a plaintiff must demonstrate that the
17 defendant acted with the intent to discriminate. *Sischo-Nownejad v. Merced Cnty. Coll. Dist.*,
18 934 F.2d 1104, 1112–13 (9th Cir. 1991), *superseded by statute on other grounds*. In an
19 employment discrimination matter, the burden of proof for an Equal Protection claim mirrors
20 that of Title VII. *Peters v. Lieuallen*, 746 F.2d 1390, 1393 (9th Cir.1984) (“Since Peters has
21 failed to demonstrate intentional discrimination on the part of the defendants, his race
22 discrimination claims under 42 U.S.C. §§ 1981 and 1983 must also fail.”); *Fed. Deposit Ins.*
23 *Corp. v. Henderson*, 940 F.2d 465, 472 n. 14 (9th Cir. 1991) (“Our cases make clear . . . that the
24 status of the § 1983 equal protection claim generally depends on the outcome of the Title VII
25 analysis.”). *See also Ohton v. City of Phoenix*, No. CV06-360PHX-MHM, 2007 WL 4405006,
26 at *10 (D. Ariz. Dec. 13, 2007) (“Analysis of a discrimination claim under § 1983 follows the
27 same legal principles as those applicable in a Title VII discrimination case) (citing *Stones v. Los*

1 *Angeles Community College Dist.*, 796 F.2d 270 (9th Cir.1986)).

2 Here, Plaintiff alleges the RSJI, and particularly affinity groups and trainings that were
 3 separated by race, violated the Equal Protection Clause. He cannot create an issue of fact on this
 4 claim. First, affinity groups were open to anyone who wished to attend, and there was no penalty
 5 for failure to participate. The same applies to the one optional training that was offered in two
 6 sections, for white employees and for employees of color—Plaintiff admits he did not take or
 7 attempt to attend either session. Every other aspect of the RSJI was directed equally to all
 8 employees. Second, there is no evidence of discriminatory intent. On the contrary, the
 9 undisputed evidence is that the motive of RSJI programming including affinity groups and all
 10 trainings, was to advance equity for all. *See* Sharkey Dep. at 70:10-72:5; 106:16-107:3
 11 (caucuses are open to anyone). *See also* Wise Report at 16 (“it is often helpful for employees
 12 with similar backgrounds (race, gender, sexuality, etc.) to occasionally meet to discuss the
 13 challenges and experiences that they as group members are having at work . . .”). Because there
 14 is no evidence of intentional discrimination, and because Plaintiff’s Title VII claims are deficient
 15 as discussed herein, the Court should dismiss his Equal Protection claim.

16 **B. The Court should dismiss Plaintiff’s Hostile Work Environment claim.**

17 To defeat summary judgment, Plaintiff must “raise a triable issue of fact as to whether
 18 (1) [he was] ‘subjected to verbal or physical conduct’ because of [his] race, (2) ‘the conduct was
 19 unwelcome,’ and (3) ‘the conduct was sufficiently severe or pervasive to alter the conditions of
 20 [his] employment and create an abusive work environment.’” *Peña v. Clark Cnty.*, No. 3:21-cv-
 21 5411-DGE, 2023 WL 3160157, *11 (W.D. Wash. Apr. 28, 2023) (citing *Manatt v. Bank of Am.*,
 22 NA, 339 F.3d 792, 798 (9th Cir. 2003); *Blackburn v. State*, 186 Wn.2d 250, 260(2016). With
 23 regard to coworker harassment, he must also show that the City, “once apprised of [the
 24 situation], failed to take adequate remedial and disciplinary action[.]” *Peña* at *11.

25 **1. RSJI trainings and messaging do not constitute harassment.**

26 Trainings about institutional racism like those Plaintiff attended while with the City are
 27 widely recognized as important tools for creating equitable workplaces. As the EEOC has noted,

1 “[Diversity] trainings can serve as vital measures to prevent or remediate workplace
 2 discrimination.” Brief for EEOC as Amici Curiae Supporting Neither Party, *Vavra v. Honeywell*
 3 *Int’l, Inc.*, 106 F.4th 702 (7th Cir. 2024) (No. 23-2823), 2024 WL 645993, at *17 (identifying
 4 orders and consent decrees requiring employers to adopt training programs to redress
 5 discrimination, including implicit bias training). “Training on concepts such as ‘white privilege,’
 6 ‘white fragility,’ implicit bias, or critical race theory can contribute positively to nuanced,
 7 important conversations about how to form a healthy and inclusive working environment.” *De*
 8 *Piero v. Pa. State Univ. et. al.*, No. 23-2281, 2024 WL 128209, at *8 (E.D. Pa. Jan. 11, 2024)
 9 (although denying Rule 12 motion, noting that “[d]iscussing in an educational environment the
 10 influence of racism on our society does not necessarily violate federal law.”). *See also* Press
 11 Release, Charlotte A. Burrows, Chair, EEOC, Burrows Statement on Supreme Court Ruling on
 12 College Affirmative Action Programs (June 29, 2023),
 13 [https://www.eeoc.gov/newsroom/statement-eeoc-chair-charlotte-burrows-supreme-court-ruling-](https://www.eeoc.gov/newsroom/statement-eeoc-chair-charlotte-burrows-supreme-court-ruling-college-affirmative-action)
 14 college-affirmative-action. (“The [Students for Fair Admissions decision ending affirmative
 15 action]. . . does not address employer efforts to foster diverse and inclusive workforces or to
 16 engage the talents of all qualified workers, regardless of their background. It remains lawful for
 17 employers to implement DEI and accessibility programs that seek to ensure workers of all
 18 backgrounds are afforded equal opportunity in the workplace.”); *Honeyfund.com, Inc. v. DeSantis*, 94 F. 4th 1272, 1281 (11th Cir. 2024), (rejecting state anti-WOKE law because
 19 teaching concepts based in CRT does not constitute discrimination *per se*).

21 The fact that Plaintiff took issue with the well-accepted principles taught in the RSJI does
 22 not give rise to a hostile work environment claim. In *Young v. Colorado Department of*
 23 *Corrections*, the plaintiff argued a glossary of terms that defined concepts such as “BIPOC,”
 24 “White Fragility,” “Race,” and “White Exceptionalism” promoted racist principles. No. 22-cv-
 25 00145-NYW-KLM, 2023 WL 1437894, at *1 (D. Colo. Feb. 1, 2023) The district court
 26 dismissed the matter on the pleadings, which was affirmed on appeal, on the basis that the
 27 allegations did not rise to the level of a hostile work environment. Numerous courts have

1 likewise held that personal disagreement with racial equity training does not support a
 2 discrimination action. *See, e.g. Norgren v. Minnesota Dep't of Hum. Servs.*, No. 22-489
 3 ADM/TNL, 2023 WL 35903, at *3 (D. Minn. Jan. 4, 2023), *aff'd*, 96 F.4th 1048 (8th Cir. 2024)
 4 (rejecting hostile work environment and constructive discharge claims based on “refusal to
 5 subscribe to CRT and ‘internalized whiteness’ and “forced imposition of CRT ideology” on
 6 basis that “being required to attend across-the-board diversity training is not a discriminatory
 7 practice under Title VII”); *Henderson v. Sch. Dist. of Springfield R-12*, 650 F. Supp. 3d 786, 802
 8 (W.D. Mo. 2023) (“Plaintiffs contend they should not have to listen to, learn, or follow
 9 Defendants’ description of equity and anti-racism discussed during the training because they
 10 personally disagree. The problem with such a theory is, particularly in areas of controversy like
 11 racial policy, a government entity would be unlikely to find any approach all employees find
 12 agreeable.”); *Shannon v. Cherry Creek Sch. Dist.*, No. 20-cv-3469-WJM-SKC, 2022 WL
 13 4364151, at *3, 7 (D. Colo. Sept. 21, 2022) (rejecting Black plaintiff’s claim that equity trainings
 14 subjected her to a racially hostile work environment where “the undisputed evidence
 15 demonstrates that the equity trainings adhere to the policy designed to promote workplace equity
 16 and nondiscrimination”); *Maron v. Legal Aid Soc'y*, 605 F. Supp. 3d 547, 552 (S.D.N.Y. 2022)
 17 (granting motion to dismiss despite Plaintiff’s complaints that employer training “insists on
 18 defining everyone by race, invites discrimination[,] and divides all thought and behavior along a
 19 racial axis”).

20 Here, the City’s trainings are based in social science and history, and expressly teach that
 21 institutional racism and inequity are the products of history and structures—they are not
 22 attributable to individual white people, and in fact can harm white people as well as people of
 23 color. Wise Report at 40 (RSJI teaches that racism and white supremacy are deeply embedded in
 24 customs, structures, and American society but “says nothing about the character of white people,
 25 as people”); Sharkey Dep. at 46:20-47:2 (RSJI recognizes that institutional racism arose from
 26 American history); 128:10-129:12 (white privilege was about historic access, not about
 27 individual white people having more privilege than others). Plaintiff may not agree with these

1 concepts, but that does not mean he has experienced discrimination by being exposed to them.⁵

2 **2. Plaintiff's other allegations of racial comments are insufficient to**
 3 **carry his claim because they are time-barred and in any event are**
 4 **merely offensive utterances.**

5 As an initial matter, most of Plaintiff's harassment allegations are barred by the statute of
 6 limitations. The statute of limitations for a hostile work environment claim is three years.
 7 *Antonius v. King Cty.*, 153 Wn.2d 256, 261 (2004). Untimely allegations may be considered, but
 8 only if they bear a sufficient relationship to the timely allegations such that they are "part of the
 9 same unlawful employment practice." *Id.* This typically requires that the conduct at issue
 10 involved "the same type of employment action, occurred relatively frequently, and [was]
 11 perpetrated by the same managers." *Crownover v. State ex. Rel Dept. of Transportation*, 165
 12 Wn. App. 131, 144 (2011) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 120
 13 (2002)). Acts that are "so discrete in time or circumstances that they do not reinforce each other"
 14 do not constitute a single hostile work environment. *Id. See also Cox v. Oasis Physical Therapy*,
 15 153 Wn. App. 176 (2009) (where there has been "intervening action by the employer," an
 16 untimely act "is no longer part of the same hostile environment claim").

17 Nearly all of Plaintiff's specific allegations are from 2017 or earlier. For example,
 18 Plaintiff claims he caught another employee denying white applicants benefits because they had
 19 white privilege in 2016. He claims that a manager asked him, "what a straight white male could
 20 possibly offer this department" in 2016. He claims that another manager told him it was
 21 impossible to be racist towards a white person sometime before April 2017. Plaintiff also
 22 claimed another employee told him he was "mansplaining" in 2017. Plaintiff Dep. at 152-155
 23 (although he admits he is not sure what it means and also that she did not say it directly to him).
 24 And he claims another employee commented about the United States' history of white
 25 supremacy in a way that felt discriminatory to him in 2017. Plaintiff Dep. Vol 1 at 175:3-181:4.

26

⁵ Additionally, calling someone racist is not the equivalent of making a racially derogatory comment. *Maron*, 605 F.
 27 Supp. 3d at 560 ("[A]s a matter of both logic and precedent, accusations of racism against a white person are not
ipso facto indicia of race-based discrimination."); *Phillips v. Starbucks Corp.*, 624 F. Supp. 3d 530, 548 (D.N.J.
 2022) ("[A]n accusation of racism, however wrong, does not fall within the protections of Title VII.").

1 Within the limitations period, Plaintiff alleges vaguely that people called him a
 2 “colonist,” but he cannot identify details. Plaintiff Dep. at 260:2-22. He claims there were more
 3 racial comments outside of RSJI trainings, but he cannot recall any specifics. *Id.* at 262:14-
 4 264:17. His most concrete allegation is one remark from Said in February 2020. Because
 5 Plaintiff’s untimely allegations involve different people and circumstances than what little he
 6 alleges occurred in 2019-2021, they should not be considered part of the same alleged unlawful
 7 practice. This leaves virtually no allegations in support of this claim, warranting its dismissal.

8 Even if the Court considers all of Plaintiff’s allegations, he cannot create an issue of fact
 9 that any harassment was severe or pervasive. In assessing whether conduct rises to the level of
 10 harassment under Title VII and WLAD, “the court examines the frequency of the discriminatory
 11 conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive
 12 utterance; and whether it unreasonably interferes with an employee’s work performance.”

13 *Reynaga v. Roseburg Forest Products*, 847 F.3d 678, 687 (9th Cir. 2017); *Blackburn*, 186 Wn.2d
 14 at 261 n.4. “[S]imple teasing, offhand comments, and isolated incidents (unless extremely
 15 serious)’ are not sufficient to create an actionable claim under Title VII [or § 1981].” *Reynaga*,
 16 847 F.3d at 687 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)).

17 Outside of the trainings (the last official one of which he took in 2019), Plaintiff alleges a
 18 handful of allegations he found offensive over the span of over five years. This is not the type of
 19 oppressive environment courts find sufficient for a hostile work environment, and this claim
 20 should be dismissed. *See Vitt v. City of Cincinnati*, 250 F. Supp. 2d 885, 890 (S.D. Ohio 2002),
 21 aff’d, 97 F. App’x 634 (6th Cir. 2004) (comment that all white people are racist, various
 22 interpersonal disputes with black employees, supervisor comment that white employee’s
 23 complaints were not taken seriously, and anonymous carving of “white bitch” into plaintiff’s
 24 desk were insufficient to create prima facie case of hostile work environment); *Sanchez v. City of*
 25 *Santa Ana*, 936 F.2d 1027, 1031, 1036 (9th Cir. 1990) (allegations that employer posted a racially
 26 offensive cartoon, made racially offensive slurs, targeted Latinos when enforcing rules, provided
 27 unsafe vehicles to Latinos, did not provide adequate police backup to Latino officers, and kept

1 illegal personnel files on plaintiffs because they were Latino were insufficient).

3. Plaintiff's belief that RSJI materials and coworker comments constituted harassment was not objectively reasonable.

4 Plaintiff repeatedly asserted during his employment that the RSJI was discriminatory and
5 harassing towards him as a white male. To prove a hostile work environment, however, Plaintiff
6 must show not only that he perceived conduct as harassing, but that the work environment was
7 hostile from “the perspective of a reasonable person belonging to the plaintiff’s racial or ethnic
8 group[.]” *Reynaga*, 847 F.3d at 687. Here, Plaintiff’s objections to RSJI and the umbrage he
9 took in response to his coworkers’ comments are tied to his outlier, fringe views on race. For
10 example, Plaintiff disagrees with the concept of white privilege and believes it is discriminatory
11 for employers to teach about it. Plaintiff Dep. Vol 1 at 148:23-149:14. Plaintiff denies the
12 United States’ history of white supremacy and finds discussion of this concept offensive. *Id.* at
13 175:17-177:6. He believes it is offensive and discriminatory to state that colorblind policies
14 perpetuate white supremacy or to say that white people benefit from systems of white
15 supremacy. *Id.* at 200:5-21, 202:2-203:5. *See also id.* at 225:1-226:9 (it is offensive to be asked
16 to identify his race in an employment situation); 227:9-228:8 (it is offensive to say white people
17 in this country historically bore responsibility for slavery); 229:7-231:21 (discussions of white
18 privilege and tribal land acknowledgments are discriminatory); *see Plaintiff Dep. Vol 2 at 403:3-3*
19 405:10 (it was offensive to be invited to a white caucus gathering, even though he did not read
20 the article whose title he found offensive).

21 Plaintiff's extreme views on race demonstrate that his perspective is not that of a
22 reasonable person, and his subjective perception of discrimination should therefore carry no
23 weight.

4. No Racial Harassment was imputed to the City because the City investigated and could not substantiate Plaintiff's claims.

26 An employer is only liable for harassment “if it knew or should have known of the
27 harassing conduct and failed to take reasonably prompt and adequate corrective

1 action.” *Silbaugh v. Buttigieg*, No. C17-1759RSM, 2021 WL 3565431, at *7 (W.D. Wash. Aug.
 2 12, 2021).

3 Here, the City took immediate corrective action upon learning of Plaintiff’s concerns
 4 about Said, and Plaintiff admits Said never made another racial comment to him. When Plaintiff
 5 later filed an EEOC charge, the City quickly commenced an investigation. It assigned an
 6 attorney investigator from the HRIU, and it bifurcated the investigation to avoid any perceived
 7 conflict of interest. The City investigated the allegations using the limited information Plaintiff
 8 provided and determined the RSJI does not discriminate against white people. It also concluded
 9 the allegations about individuals did not violate City policy. Plaintiff cites no harassing conduct
 10 from other employees after his EEOC charge. For this additional reason, his claims should be
 11 dismissed. *Vitt*, 250 F. Supp. 2d at 890 (finding plaintiff failed to state a claim for harassment
 12 when employer took steps to address Plaintiff’s concerns, including meeting with her to discuss
 13 her concerns and conducting an investigation into her complaints).

14 **C. Plaintiff’s Disparate Treatment and Retaliation claims fail because he did not
 15 experience an adverse action and was not constructively discharged.**

16 For his disparate treatment claim, Plaintiff must establish that he (1) is a member of a
 17 protected class; (2) performed his job satisfactorily; (3) experienced an adverse employment
 18 action; and (4) similarly situated individuals outside of plaintiff’s protected class were treated
 19 more favorably. *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2006).
 20 Under the WLAD, adverse employment action means “a significant change in employment
 21 status, such as hiring, firing, failing to promote, reassignment with significantly different
 22 responsibilities, or a decision causing a significant change in benefits.” *Marin v. King County*,
 23 194 Wn. App. 795, 808 (2016). Under Title VII, Plaintiff must show “some harm respecting an
 24 identifiable term or condition of employment.” *Muldrow v. St. Louis*, 601 U.S. ---, 144 S. Ct.
 25 967, 974 (2024). For his retaliation claim, Plaintiff must demonstrate he experienced an adverse
 26 event that “would deter reasonable employees from complaining” about discrimination. *Brooks*
 27

1 *v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000); *Ray v. Henderson*, 217 F.3d 1234, 1243
 2 (9th Cir. 2000).

3 Plaintiff was not terminated, disciplined, transferred, or otherwise negatively impacted at
 4 the City. While he objected to RSJI trainings and activities, it is undisputed that RSJI
 5 requirements were applied to all employees, regardless of race. In any event, attending an
 6 educational training that the employee finds uncomfortable does not rise to the level of an
 7 adverse action. *Brooks*, 229 F.3d at 929. Nor can Plaintiff claim the City’s alleged decision not
 8 to authorize his affinity group constitute disparate treatment—first, the City did not deny his
 9 request, he dropped it after Groce explained the approval process. Second, Plaintiff does not
 10 allege that another employee was permitted to create an affinity group that conflicted with RSJI
 11 goals or that the denial of his proposed affinity group negatively impact him. *Moranski v.*
 12 *General Motors*, 433 F.3d 537 (7th Circuit 2005) (rejection of request to start Christian affinity
 13 group did not constitute discrimination where decision was based on blanket rule against all
 14 religious affinity group). Finally, the various allegations Plaintiff asserts regarding his
 15 experiences after filing his EEOC charge are baseless and did not harm him in any way, as
 16 discussed above.

17 Plaintiff’s sole avenue to avoid dismissal of his disparate treatment or retaliation claims is
 18 constructive discharge, which he cannot prove. Constructive discharge is “an employee’s
 19 reasonable decision to resign because of unendurable working conditions.” *State of Washington*
 20 *v. Horning Bros., LLC*, 339 F. Supp. 3d 1106, 1130–31 (E.D. Wash. 2018) (citing *Pennsylvania*
 21 *State Police v. Suders*, 542 U.S. 129, 141 (2004)). This is an objective inquiry for the Court. *Id.*
 22 at 1131 (under Washington law, an employee must show: (1) the employer engaged in deliberate
 23 conduct which made the employee’s working conditions intolerable; (2) a reasonable person in
 24 the employee’s position would be forced to resign; (3) the employee resigned solely because of
 25 the intolerable conditions; and (4) the employee suffered damages) (citing *Allstot v. Edwards*,
 26 116 Wn. App. 424, 433 (2003)). Resignations are presumed voluntary and cannot give rise to a
 27 claim for constructive discharge unless the employee shows “the resignation was prompted by

1 duress or an employer's oppressive actions." *Townsend v. Walla Walla Sch. Dist.*, 147 Wn. App.
 2 620, 627-628 (2008).

3 At the time of his resignation, Plaintiff had not been mandated to take a specific RSJI
 4 training in nearly two years. He had adamantly refused to participate in two RSJI activities a
 5 year, yet he faced no discipline or negative impact on his review. The City had investigated his
 6 discrimination complaints, HR had corrected his FMLA paperwork error, and his management
 7 and HR were working through his technical and other issues pertaining to working remotely.
 8 There was nothing preventing Plaintiff from remaining employed at the City other than the fact
 9 that he had already moved to Texas and did not wish to return to Seattle for work. There is
 10 simply no basis to find a constructive discharge here, and so all claims predicated on this theory
 11 should be dismissed. *Sneed v. Barna*, 80 Wn. App. 843, 850 (1996) (no evidence of constructive
 12 discharge where plaintiff had to share a secretary and supplies in her new position, was moved to
 13 a small and noisy office, and received no guidance because these allegations, while frustrating,
 14 were not objectively intolerable); *Barrett v. Weyerhaeuser Co. Severance Pay Plan*, 40 Wn. App.
 15 630, 638 (1985) (mere dissatisfaction with working conditions does not negate the voluntariness
 16 of a resignation).

17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court should grant Defendant's Motion for Summary
 19 Judgment and dismiss all claims with prejudice.

20 DATED August 16, 2024.

21 *I certify that this Motion contains 8,394
 22 words, in compliance with the Local Civil
 23 Rules.*

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CERTIFICATE OF SERVICE

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DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 24
(Case 2:22-CV-01640-JNW)
4869-4667-2058v.5 0002348-000031

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1 Declared under penalty of perjury under the laws of the State of Washington.

2 DATED August 16, 2024 at Renton, Washington.

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